

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CAPITAL SENIOR LIVING, INC.,)	Case No. 3:22-CV-00606
)	
Plaintiff,)	JUDGE JAMES G. CARR
v.)	
)	PLAINTIFF’S MOTION TO COMPEL
HEATHER BARNHISER, <i>et al.</i> ,)	DEFENDANTS HEATHER
)	BARNHISER AND ELLIE SELTERS
Defendants.)	<u>TO PRODUCE MOBILE DEVICES</u>

Plaintiff Capital Senior Living, Inc. (“Capital Senior”) respectfully moves this Court for an Order compelling Defendants Heather Barnhiser (“Barnhiser”) and Ellie Selders (“Selders”) to produce for purpose of forensic imaging any mobile devices owned or used by Barnhiser and Selders, for personal purposes or business, during the period of July 1, 2021 through the present (collectively the “Devices”). Capital Senior further moves this Court for an Order appointing Vestige, Ltd. as a neutral expert to make a forensic image of the Devices and conduct a forensic examination of the Devices. As set forth more fully in the attached Memorandum In Support, Barnhiser’s and Selders’ use of these Devices has made them directly relevant to this action and they are now refusing to make them available during discovery. Capital Senior’s grounds for this Motion are:

- Barnhiser and Selders admitted that they engaged in telephone conversations and text-message conversations from Fall 2021 through Spring 2022 with current and former Capital Senior employees, including former employees who went to work for Defendant Meridian Senior Living, LLC (“Meridian”) at Defendant Maumee Pointe, LLC (“Maumee Pointe”);
- Capital Senior put Barnhiser, Meridian, and Maumee Pointe on notice on January 24, 2022, that Barnhiser had a duty to preserve including all text messages and data having to do with her former employment with Capital Senior and her new employment at Maumee Pointe;
- Barnhiser and Selders have, to date, produced only two text-message conversations related to those communications and admit that they do not possess “text messages

prior to April 2022 due to the fact that [they] had a routine practice of deleting text messages from [their] cell phone inbox[es], regardless of sender”;

- Barnhiser and Selders have repeatedly refused to produce their Devices for imaging and review in response to a Capital Senior discovery request more than three months ago;
- Capital Senior is entitled to forensically examine the Devices for evidence of deleted text messages as well as Barnhiser’s and Selders’ alleged routine of deleting text messages from all senders prior to Capital Senior filing this action; and
- Capital Senior proposes a narrowly tailored and constrained third-party forensic inspection of Barnhiser’s and Selders’ Devices that would not constitute undue burden or expense on Barnhiser or Selders.

WHEREFORE, Capital Senior respectfully requests that the Court compel Barnhiser and Selders to make their Devices available for forensic imaging and appoint Vestige, Ltd. as the neutral expert to make a forensic image of such Devices and to conduct a forensic examination of the Devices. A proposed Order is attached and will be emailed separately to the Court.

s/ Richard E. Hepp

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 37.1, counsel for Plaintiff Capital Senior Living, Inc. hereby certifies that he made a sincere, good-faith effort to resolve the discovery disputes by conferring with opposing counsel prior to filing this motion.

s/ Richard E. Hepp

*One of the Attorneys for
Plaintiff Capital Senior Living, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, I electronically filed the foregoing document with the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all attorneys of record.

s/ Richard E. Hepp

*One of the Attorneys for
Plaintiff Capital Senior Living, Inc.*